

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT McELHINNEY,

Plaintiff,

Case No. 1:07-cv-900

v.

Honorable Richard Alan Enslen

MARY BERGHUIS, *et al.*,

Defendants.

ORDER OF DISMISSAL

This is a civil rights action brought by a state prisoner pursuant to 42 U.S.C. § 1983. On October 23, 2007, the Court entered an order of deficiency because Plaintiff had failed to pay the \$350.00 civil action filing fee or to file a financial affidavit and trust fund account statement as required by 28 U.S.C. § 1915(a)(2) to apply to proceed *in forma pauperis*. The Court allowed 30 days for Plaintiff to comply. Plaintiff was warned that if he failed to comply, the Court would presume that he was not proceeding *in forma pauperis*, assess the entire filing fee, and dismiss his case for want of prosecution.

More than 30 days have elapsed. Plaintiff sent a letter to the Court stating that he had erred in filing a civil rights action and intended to file a new habeas corpus action instead of pursuing this case. Because Plaintiff failed to pay the \$350.00 civil action filing fee or to submit the requisite document to apply to proceed *in forma pauperis* as ordered by the Court, dismissal of this action without prejudice for want of prosecution is appropriate. Therefore:

IT IS HEREBY ORDERED that the case is **DISMISSED WITHOUT PREJUDICE**. Plaintiff shall remain liable for payment of the \$350.00 civil action filing fee.

DATED in Kalamazoo, MI:
January 7, 2008

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
SENIOR UNITED STATES DISTRICT JUDGE